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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200916-0245]

RIN 0648-BJ55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Regulatory Amendment 33

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement a management measure described in Regulatory Amendment 33 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule removes the 4-day minimum season length requirement for South Atlantic red snapper (commercial or recreational). The purpose of this final rule is to improve access to South Atlantic red snapper, particularly for the recreational sector.

DATES: This final rule is effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of Regulatory Amendment 33 to the Snapper Grouper FMP (Regulatory Amendment 33) may be obtained from *www.regulations.gov* or the Southeast Regional Office website at

https://www.fisheries.noaa.gov/action/regulatory-amendment-33-red-snapper-fishing-seasons. Regulatory Amendment 33 includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Analysis (RFA).

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: *frank.helies@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the snapper-grouper fishery under the Snapper-Grouper FMP, which includes red snapper. The Snapper-Grouper FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On May 14, 2020, NMFS published the proposed rule for Regulatory Amendment 33 and requested public comment (85 FR 28924). The proposed rule and the Regulatory Amendment 33 outline the rationale for the actions contained in this final rule. A summary of the management measure described

in the Regulatory Amendment 33 and implemented by this final rule is described below.

Background

The harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through Amendment 17A to the Snapper Grouper FMP when the stock was determined to be overfished and undergoing overfishing (75 FR 76874; December 9, 2010). The Council developed a process for allowing limited harvest of red snapper through Amendment 28 to the Snapper-Grouper FMP (78 FR 44461; July 24, 2013). In 2018, the Council revised that process and revised the commercial and recreational annual catch limits (ACLs) through Amendment 43 to the Snapper-Grouper FMP (83 FR 35428; July 26, 2018).

The commercial ACL is 124,815 lb (56,615 kg) round weight, and the commercial season begins on the second Monday in July each year. The commercial ACL is monitored during the season and the sector is closed when the ACL is reached or projected to be reached. The commercial fishing season was open for 60 days in 2017, 116 days in 2018, and 54 days in 2019.

The recreational ACL is 29,656 fish, and the recreational season begins on the second Friday in July and consists of weekends only (Friday, Saturday, and Sunday).

The length of the recreational red snapper season is projected based on catch rate estimates from previous years, and the length of the projected fishing season is announced each year in the **Federal Register** before the start of the season.

For South Atlantic red snapper, NMFS annually projects the number of days that it would take for the commercial and recreational sectors to reach their respective ACL. If NMFS projects the South Atlantic red snapper season (commercial or recreational) would be 3 days or less, the respective season would not open for that fishing year. Under both the current regulations and the regulations in this final rule, the red snapper commercial and recreational seasons are projected and managed independently of each other; that is, harvest for one sector can occur without the other. However, NMFS notes that to date, there has not been a fishing year where one sector was allowed to harvest red snapper and the other was not. NMFS initially implemented the 3-day minimum season length provision in 2013 because the Council determined that a season of less than 4 days would not provide sufficient fishing opportunity to the public (78 FR 44461, July 24, 2013).

Recreational fishermen have expressed concern to the Council and NMFS that as the South Atlantic red snapper population recovers and catch rates increase, access to the red snapper resource could decline. Specifically, as the red snapper population rebuilds, more fish are available for harvest and effort has generally increased during the South Atlantic red snapper recreational fishing season, particularly off the east coast of Florida. Therefore, with no change in the recreational red snapper ACL, fishing seasons in future years could get shorter despite the population rebuilding. The length of the red snapper recreational season has declined from 10 days in 2017, to 6 days in 2018, 5 days in 2019, and 4 days in 2020, as a result of the recreational ACL being projected to be reached sooner in each year. To better ensure recreational access to red snapper, this final rule removes the 4-day minimum season length requirement. In addition, because the commercial season for red snapper has remained open for several months each year in recent years when the harvest of red snapper was allowed, NMFS expects that the duration of the commercial season will not be impacted by this action.

Management Measures Contained in this Final Rule

This final rule removes the requirement that if NMFS projects a red snapper season (commercial or recreational) would be 3 days or less, the respective fishing season will not open for that fishing year. Therefore, red snapper harvest could be open for either commercial or recreational harvest for less than 4 days. For the recreational sector particularly, this measure could allow for a fishing season to occur that otherwise would not be allowed. NMFS expects this measure to increase the flexibility for recreational sector access to red snapper and enhance recreational fishing opportunities. NMFS notes that the recreational ACL and accountability measures are not changing in this final rule, and thus, no negative impacts to the stock are expected.

Comments and Responses

NMFS received 42 comments from individuals, commercial and recreational fishermen, and fishing organizations during the public comment period on the proposed rule for Regulatory Amendment 33. Most comments were in support of allowing red snapper commercial and recreational fishing seasons, regardless of length. NMFS acknowledges the comments in favor of the action in the proposed rule and agrees with them. Some comments were outside the scope of the proposed rule and are not responded to in this final

rule. Comments that opposed the action contained in Regulatory Amendment 33 and the proposed rule are summarized below, along with NMFS' responses.

Comment 1: If the commercial or recreational season is projected to be 3 days or less, it is better for the stock in the long term to not open the season.

Response: NMFS acknowledges that allowing harvest of South Atlantic red snapper during a 3 day or less fishing season as described in this final rule could result in higher fishing mortality than would occur if harvest were prohibited. However, allowing harvest for 3 days or less is not expected to negatively impact the red snapper stock because the overall harvest would continue to be limited to the commercial and recreational ACLs, and accountability measures and other existing red snapper regulations will remain in place.

Comment 2: If either sector's fishing season is projected to be 3 days or less, only the recreational season should be opened under those conditions because the commercial sector has the greater potential to negatively affect the red snapper population, and the recreational sector generates more revenue to the economy.

Response: NMFS acknowledges the importance of red snapper for the recreational sector but disagrees that the

commercial season should be limited if the recreational season is projected to be less than 4 days. As explained previously, under the Snapper-Grouper FMP, the commercial and recreational sectors are managed independently to constrain their harvest to the respective ACLs. The red snapper recreational and commercial ACLs are determined based upon the current sector allocation ratio developed by the Council of 71.93 percent for the recreational sector and 28.07 percent for the commercial sector. The commercial harvest, restricted by a trip limit of 75 lb (34 kg), gutted weight, is monitored via commercial logbooks and dealer reports and is closed when the commercial ACL is met or projected to be met. Therefore, allowing harvest by the commercial sector is not expected to negatively impact the status of the red snapper stock.

One of the primary objectives of this action is to increase the likelihood that the recreational sector will continue to have a fishing season. NMFS expects that this final rule will increase fishing opportunities for the recreational sector that would otherwise be foregone, thereby allowing future economic benefits coming from the recreational harvest of red snapper that would not have been realized.

Comment 3: If NMFS projects that a commercial season is allowed, then it is only fair to also have a recreational season. If no recreational season is projected, you should close the commercial season as well.

Response: NMFS disagrees. As discussed in the response to *Comment 2*, the red snapper commercial and recreational seasons are projected and managed independently of each other and harvest of one sector can occur without the other. NMFS notes that to date, there has not been a fishing year where one sector was open to the harvest of red snapper and the other sector was closed. However, because the commercial season for red snapper has remained open for a period significantly longer than 3 days during recent years, NMFS expects that the commercial season would continue to open regardless of this rule.

NMFS projects when recreational landings will reach the recreational ACL for each fishing season. Without this final rule being implemented, a recreational season would not occur if NMFS projects a recreational season of 3 days or less. Allowing a recreational season to occur contrary to season projections would increase the likelihood of exceeding the recreational and total ACLs, which could negatively affect stock rebuilding. It could also increase the risk that a fishing season the next year would not be

allowed to open because of the increased landings the previous year.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Regulatory Amendment 33, the Snapper-Grouper FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is considered an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments

were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Red snapper, Seasons, South Atlantic.

Dated: September 16, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.183 [Amended]

2. In § 622.183, remove paragraph (b)(5)(iii).

